IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.186 of 2012

Branch Manager, NEW India Assurance Company Ltd., Magardahi, Samastipur represented through Sri Prabhakar Pradhan working as Dy Manager and duly Constituted Attorney of The New India Assurance Company Co. Ltd. having its Regional Office at 6th Floor, B.S.F.C. Building, Frazer Road, P.S. Kotwali, Distt. - Patna

... ... Appellant/s

Versus

1. Most. Asha Singh W/O Late Chandeshwar Prasad Singh R/O Village - Mow, P.S. Vidyapati Nagar, Distt. - Samastipur
2. Ram Baboo Sah S/O Fidenu Sah R/O Village - Chaksahid, P.S. Rajapaker, Distt. - Vaishali at Present Residing At 9 Dol Govind Singh Zone, Salika, Hawara
3. Rajendra Paswan S/O Bhagirath Paswan R/o Village - Fulwaria, P.S. Mahua, District - Vaishali At Present Residing at Kemal Wekt Road, Kolkata
4. Sheo Kumar S/O Late Ram Das R/O Village - Sardarpur, P.S. Bind, District - Nalanda

... ... Respondent/s

Appearance :
For the Appellant/s : Mr. Shailendra Kumar
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date : 10-12-2018

Heard learned counsel for the appellant on this miscellaneous appeal. None turned up on behalf of the respondents despite service of notice.

2. This miscellaneous appeal has been preferred against the judgment dated 19.07.2011 and award dated 05.09.2011 passed by learned Additional District Judge, Fast Track Court-I-cum-Motor Vehicle Accident Claim Tribunal, Samastipur in Claim Case No. 08 of 2006 whereby the learned Tribunal allowing the claim petition filed by the claimant, directed the O.P. no. 3, The New

India Insurance Company Limited to pay compensation to the tune of Rs. 12,00,500/- along with interest @ 6% per annum from the date of filing of the claim case till its realization to the claimants.

3. Factual matrix of the case is that Claim Case No. 08 of 2006 was filed by the claimant under Section 166 of the Motor Vehicle Act for awarding compensation on account of death of Chndeshwar Prasad Singh in motor vehicle accident with the case in succinct that on 08.06.2003, said Chndeshwar Prasad Singh was proceeding from Bakhtiyarpur to Biharsharif by Maruti Van bearing registration no. BL 8CB/2693. As soon as, he arrived at NH 31, Village Shahpur, P.S. Rahui Bhaganbigha, Distt. Nalanda, a truck bearing registration no. BRG-5962 being driven rashly and negligently by its driver arrived there and dashed the aforesaid Maruti Van. Resultantly, driver of maruti van and Chendeshwar Prasad Singh died on spot while other commuters sustained injury. The aforesaid accident took place due to rash and negligent driving of the offending vehicle by its driver at the relevant time of accident. Regarding the aforesaid accident, Rahui P.S. Case No. 96 of 2003 was instituted under Sections 279, 337, 338, 427 and 304(A) of the IPC against the driver of the offending vehicle. The deceased was aged about 45 years at the time of accident and he

was a Contractor and used to earn Rs. 12,000/- per month out of said vocation.

4. Respondent nos. 1, 2 and 3 put their appearance in the case and filed separate written statement while case was proceeded *ex-parte* against respondent no. 4. Claimant adduced ocular as well as documentary evidence in buttress of her case.

5. After hearing the parties and perusing the record, learned Tribunal passed the impugned judgment and award as detailed in the earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the O.P. No. 3 has preferred this miscellaneous appeal.

7. It is submitted by learned counsel for the appellant that deceased Chandeshwar Prasad Singh was President of Akhil Bhartiya Pariwar Kalyan Parishad, Bhopal, hence, the income of the Society as reflected in the Income Tax Clearance Certificate, Exhibit-6 cannot be considered to be the income of the deceased. It is further submitted that Form No. 16-A, Exhibit-9 filed by the claimant indicates that out of Rs. 46,000/- (income of the deceased) an amount of Rs. 4,830/- was deducted as income tax @ 10.5% on 30.09.2002 and the accident is of 8.06.2003, hence, the aforesaid income of the deceased ought to have been considered as

the income of the deceased at the relevant time as the claimant has failed to file any document regarding the income of the deceased at the relevant time, but the learned Tribunal has wrongly, perversely and without any basis considered the income of the deceased to be Rs.12,000/- per month.

8. From the perusal of the record, it appears that as per the case of the claimant, deceased was conductor and used to earn 12,000/- per month out of aforesaid vocation. From perusal of ocular evidence of the claimant, it appears that all the four witnesses examined by the claimant have stated that deceased was President of the Akhil Bhartiya Pariwar Kalyan Parishad, Bhopal. The claimant has filed Income Tax Clearance Certificate, marked as Exhibit-6, in the name of Akhil Bhartiya Parivar Kalyan Parishad, Bhopal (M.P.) showing the income of the aforesaid society to the tune of Rs. 98,810/- in the year 1997-98 in buttress of the income of the deceased, but as the deceased happens to be President of the aforesaid Society, the income of the Society cannot be considered to be income of the deceased.

9. On the other hand, from perusal of the Form-16A marked as Exhibit-9 filed by the claimant, it appears that the income tax to the tune of Rs. 4,830 was deducted from the income of the deceased @ 10.5% on 30.9.2002. The claimant has not filed

any other document regarding income of the deceased at the relevant time of accident on 08.06.2003, hence, the aforesaid document can be based to assess the income of the deceased. According to aforesaid evidence of claimant income of the deceased comes to the tune of Rs. 4,000/- per month i.e. Rs. 48,000/- per annum. As the claimant has filed the claim petition claiming herself to be the sole legal representative of the deceased, hence, 1/3 of the aforesaid income of the deceased i.e. 16,000/- is deducted towards personal expenses of the deceased which he would have made had he been alive. On the aforesaid deduction, the loss of dependency comes to the tune of Rs. 32,000/- per annum. As the deceased was aged about 45 years at the time of accident, which has not been assailed by the appellant, hence, multiplier of 13 is adopted to work out the amount of compensation. On applying the aforesaid multiplier, the amount of compensation comes to the tune of Rs. 4,16,000/-. In view of decision of Hon'ble Apex Court rendered in **National Insurance Company Ltd. Vs. Pranay Sethi and Ors. Reported in 2017 (4) 261 PLJR,** Rs. 70,000/- is awarded towards other traditional heads such as funeral expenses and loss of consortium. On addition of the aforesaid heads of compensation, the total amount of compensation comes to the tune of Rs. 4,86,000/-. Besides, the aforesaid compensation, interest @ of 6% per annum on the aforesaid amount of compensation, as awarded by the learned Tribunal and not assailed by the appellant, is awarded from the date of filing of claim case till its realization.

10. In the facts and circumstances, the appellant is directed to pay the aforesaid amount of compensation and interest thereon to the claimant after deducting the amount, if any paid by it within two months from the date of this judgment. Accordingly, this appeal is disposed of with the aforesaid modification in the impugned judgment and award.

11. Let the statutory amount to the tune of Rs. 25,000/- deposited by the appellant be sent down to the learned Tribunal through cheque in the name of claimant for its adjustment towards payment of compensation.

(Prakash Chandra Jaiswal, J)

sushma/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	